Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

KATHLEEN RAVEN & TONEY RAVEN, as individual objectors to class action settlement,

Petitioners,

v.

COUNTRYWIDE HOME LOANS, INC., Countrywide Home Loans, Inc. doing business as America's Wholesale Lender & ANNE Y. GONZALES & JULIE TOWER on behalf of themselves and all others similarly situated

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Court of Appeal of the State of California refused to consider Petitioners' argument that approval of the class action settlement at issue violated the due process rights of the substantial number of Spanish-speaking class members whose home mortgage accounts were serviced by Respondent Countrywide Home Loans, Inc. ("Countrywide") in Spanish.

The California appellate court believed that, despite extensive briefing of *Devlin v. Scardelletti*, 536 U.S. 1 (2002), as Petitioners were not native Spanish speakers, they had no standing to appeal the due process and Spanish notice issue.

Two questions are presented:

1. Whether the holding in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) is binding on the States and mandates that State Courts permit class members who appear at the final approval hearing and voice objections to appeal on any basis from the order approving the class action settlement?

2. Whether federal Constitutional due process and equal protection rights under the Fourteenth Amendment protect Spanish speaking class members whose mortgage accounts were serviced by Countrywide with monthly statements in Spanish, but who were not given Spanish notice of the class action?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioners Kathleen Raven and Toney Raven are individuals.

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OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Three was entered on August 26, 2004 (App. *infra*, 1a-23a) (unpublished). A timely Petition for Review to the Supreme Court of California was denied on November 10, 2004 (App. *infra*, 24a).

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 United States Code § 1257(a).

The judgment of the Court of Appeal of the State of California, Second Appellate District, Division Three was entered on August 26, 2004 (App. *infra*, 1a-23a). A timely Petition for Review to the Supreme Court of California was denied on November 10, 2004 (App. *infra*, 24a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Supremacy Clause of the Constitution of the United States of America

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Constitution of the United States, article VI, cl. 2.

Fourteenth Amendment to the Constitution of the United States of America, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Constitution of the United States of America, 14th Amendment, Section 1

STATEMENT OF THE CASE

This case raises important, recurring questions about the application to State court class actions of this Court's holding in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) that class members objecting to a proposed class action settlement have an absolute right to appeal the trial Court's decision to disregard their objections.

Petitioners, as individual members of the proposed class, objected to the proposed settlement of the class action.

Their objections, included contentions that the English-only class notice was inadequate as to the numerous Spanish speaking class members (over ten thousand Latino borrowers) whose home mortgage accounts were serviced by Defendant Countrywide with, inter alia, monthly statements entirely in Spanish.

The trial court approved the class settlement over Petitioners' objections and Petitioners appealed.

The California appellate court, despite extensive briefing of *Devlin v. Scardelletti*, supra, 536 U.S. 1, refused to consider Petitioners' appeal of the Spanish notice issue because Petitioners did not claim to be Spanish speakers or to have been harmed by the English-only class notice. Thus, the California appellate court held that Petitioners were not "aggrieved" parties as to English-only notice and could not appeal on the Spanish notice issue.

RULE 14(g)(i) STATEMENT

In the trial court, Petitioners argued in their Reply to Countywide's Supplemental Memorandum in Support of Motion for Final Settlement Approval (filed Oct. 2, 2002):

> "Interveners submit that the mailed notice should have been in Spanish to all Countrywide accounts where the monthly statement is in Spanish or where the contract was negotiated in Spanish in order to provide proper and actual notice to those Spanish-speaking class members."
>
> Joint Appendix, Vol. 4, page 918.

The California appellate court noted that Petitioners' contentions included "... the failure to provide notice in Spanish to Spanish-speaking class members violated due process, public policy ... and the equal protection clause." (App. *infra*, 7a see also discussion at App. *infra*, 9a-10a).

Petitioners briefing to the California appellate court included extensive discussion of *Devlin*, and of due process class notice requirements, e.g.:

> "Settling Parties, although they go on at length claiming that Appellants do not have standing and may not raise what they claim are "new" issues on appeal do not discuss, or even mention, *Devlin v. Scardelletti* (2002) 536 U.S. 1, 122 S.Ct. 2005, 153 L.Ed.2d 27 in which the Supreme Court eviscerated earlier law on standing to appeal in class actions and indicated that appealing from an order approving a class

settlement permitted raising what Settling Parties call "new" issues on appeal. Please see full discussion of *Devlin* below starting at Heading.

It is not through lack of knowledge that Settling Parties ignore *Devlin*. *Devlin* was discussed in the proceedings in the Court Below. JA1062."

> from Petitioners Reply Brief in the Calif. Court of Appeal, dated July 7, 2004.

and,

"Here, the settlement approved of by the Court Below, inter alia, is unlawful and repugnant to public policy because Civil Code § 1632 required the notice to be in Spanish as to those class members whose accounts were serviced in Spanish, as did the rule stated by the [U.S.] Supreme Court:

> 'But when notice is a person's due, process which is a **mere gesture is not due process**. **The means employed must be such as one desirous of actually informing the absentee might reasonably adopt** to accomplish it.'
>
> *Mullane, v. Central Hanover Bank* (1950) 339 U.S. 306, 315; 70 S. Ct. 652; 94 L. Ed. 865 (bold added). Accord, *Dusenbury* v. *U.S.* (2002) 534

U.S. 161, 169; 122 S. Ct. 694.'" from Petitioners Reply Brief in California Court of Appeal

REASONS FOR ALLOWANCE OF THE WRIT

The California appellate court erred in not following the applicable holding of this Court in *Devlin v. Scardelletti*, supra, 536 U.S. 1, 14, although other state Courts, including the Texas Supreme Court[1], and the Arkansas Supreme Court[2] have either followed *Devlin* (Texas) or

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[1] The Texas Supreme Court recently followed *Devlin* in overruling the Texas Court of Appeals dismissal of class members' appeal because the class members lacked standing and thus there was no subject matter jurisdiction. *City of San Benito v. Rio Grande Valley Gas Company* (2003, Texas Supreme Ct.) 109 S.W.3d 750, 754. In *City of San Benito* the Texas Supreme Court stating: "We follow the Supreme Court's decision in *Devlin*." *Id.* at 755. And further stating: "We agree with the [U.S. Supreme] Court's analysis [in *Devlin*] that the most important consideration [guaranteeing the right to appeal to nonnamed class members] is whether the appellant is bound by the judgment." *Id.* at 755.

[2] The Arkansas Supreme Court recently held that under that Arkansas law, objectors must timely intervene in a class action to have standing to appeal, distinguishing the Arkansas case from *Devlin*. *Ballard v. Advance America* (2002) 349 Ark. 545, 548; 79 S.W.3d 835; 2002 Ark. LEXIS 402; Cert. Denied *Ballard v. Advance Am.*, 538 U.S. 906, 2003 U.S. LEXIS 1993 (U.S., Mar. 10, 2003). Then, in a

indicated they will reconsider earlier holdings in view of *Devlin* (Arkansas).

Thus, the California appellate court decision at issue in this writ petition is in conflict with the decision of this Court in *Devlin*, as well as the decisions of at least two other State's Supreme Courts

This case come within Supreme Court Rule 10(c) provisions for review on certiorari that a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Here, the California appellate court's ruling conflicts with *Devlin*, supra, 536 U.S. 1.

The rights of nonnamed class members to appeal all aspects of approval of a class action settlement was established by *Devlin*, supra. This Court decided that the nonnamed class member in *Devlin* was to be allowed to appeal that aspect of the trial court's order which affected him—the

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later case, it indicated that *Devlin* had undermined the common-law basis for Arkansas doctrine limiting standing to appeal in class actions and that it would revisit the issues in *Ballard*, supra, once "... the impact of *Devlin v. Scardelletti*, supra, has been thoroughly analyzed." *Butt v. Evans Law Firm* (2003) 351 Ark. 566, 577; 98 S.W.3d 1; 2003 Ark. LEXIS 62 (underlining added).

trial court's decision to disregard his objections. *id.*, at 9, 10[3].

Notwithstanding *Devlin*, the California appellate court refused to consider Petitioners' arguments as to what they contended was required notice in Spanish because Petitioners were said to lack "standing." (App., *infra*, 9a-10a).

The *Devlin* holding is binding on State Courts because it relies on Nineteenth Century precedent, not the Federal Rules of Civil Procedure. *Devlin*, supra, 536 U.S. 1, 7-8.

As scholarly comment on *Devlin* has noted:

> "The Court's concern to protect individuals bound by a judgment, whose interests may be inadequately represented, by conferring on them a right to appeal the outcome of the settlement proceedings, might be understood as rooted in the requirements of due process. **Such an interpretation would render *Devlin's* holding binding on state civil procedure, most notably state class actions.**"
>
> 116 Harvard. Law Review 332 (Nov. 2002) Case Note: Leading

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[3] "What is most important to this case is that nonnamed class members are parties to the proceedings in the sense of being bound by the settlement. It is this feature of class action litigation that **requires that class members be allowed to appeal the approval of a settlement when they have objected at the fairness hearing**."

Devlin v. Scardelletti 536 U.S. 1, 10 (2002) (bold added)

> Cases: II. Federal Jurisdiction and Procedure [*Devlin v. Scardelletti*], fn 45 (bold added).

The California courts erred in not following this Court's holdings in *Devlin v Scardelletti*, 536 U.S. 1 (2002) by refusing to consider Petitioners appeal of the Spanish notice issue and in not protecting the due process and equal protection rights of Spanish-speaking class members to class notice reasonably calculated to inform them.

CONCLUSION

This Court should ensure that its ruling in *Devlin* is complied with by State Courts and that the due process and equal protection rights of Spanish-speaking class members are protected.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE
DATED AND DECIDED AUGUST 26, 2004

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

ANNE Y. GONZALES et al,
Plaintiffs and Respondents,
v.
COUNTRYWIDE HOME LOANS, INC.,
Defendant and Respondent;

KATHLEEN RAVEN et al.,
Interveners and Appellants.

B 163706; B 166302

(Los Angeles County Super. Ct. No. BC232928)

COURT OF APPEAL-SECOND DIST.
FILED
AUG 26 2004
JOSEPH A. LANE
Clerk

Deputy Clerk

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Carolyn B. Kuhl, Judge. Affirmed.

Law Offices of Howard Strong and Howard Strong for Interveners and Appellants.

The Rossbacher Firm, Henry H. Rossbacher, James S. Cahill; Law Offices of Clifford A. Cantor and Clifford A. Cantor for Plaintiffs and Respondents.

Sanford Shatz; Severson & Werson and Jan T. Chilton for Defendant and Respondent.

Kathleen Raven and Toney Raven intervened in a class action to object to a proposed settlement between the plaintiff class of borrowers, represented by class representatives Anne Y. Gonzales and Julie Tower, and defendant Countrywide Home Loans, Inc. (Countrywide). The superior court overruled the objections, approved the settlement, and entered a judgment pursuant to the settlement. The Ravens appeal the judgment and also appeal an order denying their motion for attorney fees under Code of Civil Procedure section 1021.5. On appeal, the Ravens challenge the form and manner of notice to class members, the fairness of the settlement, the denial of their requests for discovery, and other matters. The Ravens also contend the denial of their motion for attorney fees was legal error. We conclude that the Ravens have not shown prejudicial error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Gonzales and Tower sued Countrywide in July 2000 alleging that it collected excessive fees from prospective borrowers for credit reports and other services provided by third parties. The plaintiffs filed the complaint as a class and representative action alleging counts for unfair business practices (Bus. & Prof. Code, § 17200), unjust enrichment, breach of fiduciary duty, conversion, and negligence. The complaint prays for certification of a multi-state class, compensatory damages, restitution or disgorgement, and injunctive relief. The plaintiffs dismissed the breach of fiduciary duty and conversion counts in September 2000 by filing a request for dismissal with the court clerk, without obtaining prior court approval.

The parties participated in a mediation before a judge in March 2002 and reached a proposed settlement. The settlement provided that the plaintiff class would consist of borrowers who received first mortgage loans secured by real property in California between July 6, 1996, and the date of preliminary court approval of the settlement. It provided that Countrywide would make "reasonable efforts" to ensure compliance with certain federal statutory and regulatory requirements regarding disclosure of and charges to borrowers for services provided by third parties, and "reasonable efforts" to ensure compliance with certain informal opinions by the federal Department of Housing and Urban Development, despite some federal court

authority that disclosure was not required. It provided that Countrywide would mail a $35 certificate to each of the estimated 173,500 class members whose loans were still open and make a certificate available upon request to each of the estimated 90,500 class members whose loans were closed. The certificates could be applied towards closing costs on a new purchase or refinance mortgage loan from Countrywide within two years after a final judgment. The settlement also provided for payment of $1,000 to each class representative and up to $145,000 in attorney fees to class counsel, subject to court approval. The settlement provided that Countrywide or its designee would administer the settlement and provide notice of the settlement to class members.

The settlement provided that the class members would release Countrywide and related individuals and entities, including its "direct and indirect affiliates," from all present and future, known and unknown, claims and causes of action relating to Countrywide's "past charges for credit reports and disclosures or non-disclosures or omissions related to credit reports or fees for credit reports, and for any general, special, consequential, and punitive damages in connection with such claims, as well as any and all claims for disgorgement, restitution, injunctive relief, penalties, attorney's fees, and costs of suit in connection with such claims."

The plaintiffs moved for preliminary court approval of.the settlement. The court denied the motion in April 2002. The parties participated in

further mediation before a judge resulting in amendments to the proposed settlement. The amendments included more definitive provisions that for two years Countrywide would (1) not mark up the actual cost of credit reports to borrowers; (2) instruct its closing agents to disclose the names of third party providers of credit reports; (3) disclose its affiliations with credit report service providers; (4) conduct training sessions against marking up; and (5) review its closing instructions and make changes to ensure compliance with certain federal laws and regulations. The amendments also provided that borrowers from Countrywide's Brea branch would receive payment of $7.50 each in lieu of a $35 credit. The amendments provided further that Countrywide would conduct surveys one and two years after entry of judgment of one percent of its mortgage loans initiated in the preceding year to determine Countrywide's compliance with the disclosure and no-markup requirements, and submit a confidential report on each survey to the court.

The plaintiffs moved for preliminary approval of the settlement as amended. In June 2002, the court granted preliminary approval of the settlement, approved the form and manner of notice to class members, conditionally certified the plaintiff class for settlement purposes, and scheduled a hearing on final settlement approval for September 11,2002.

Howard Strong, a class member and an attorney, filed an ex parte application in July

2002 for an order permitting him to review the discovery obtained by the plaintiffs. The court granted the application and ordered the requested relief in August 2002. The Ravens as class members, with Strong as their counsel, then intervened in the action in August 2002 and objected to the proposed settlement on several grounds. They objected to the form and manner of notice to class members, the scope of the release, and other settlement terms. Strong also intervened personally and joined in the Ravens' objections.

Plaintiffs and Countrywide filed points and authorities and declarations in support of the settlement, and the interveners filed points and authorities, evidentiary objections, and declarations in opposition. On September 11, 2002, the court heard argument and continued the hearing on final settlement approval to October 4, 2002. Strong withdrew as an intervener and objector on September 12, 2002.

The court overruled the interveners' objections and granted final approval of the settlement on October 4, 2002. The court concluded that the incidence of markups was infrequent and that the $35 coupons were appropriate in these circumstances. The court found that proper notice was provided to class members, granted final certification of the plaintiff class, found the settlement fair, adequate, and reasonable, and awarded class counsel $145,000 in attorney fees and expenses. The court concluded, however, that Countrywide's

compliance reports should be signed under penalty of perjury. In the judgment entered that same day, the court interlineated language requiring Countrywide to verify the reports under penalty of perjury and serve the reports on the plaintiffs and interveners, and deleted the provision that the reports be confidential. The Ravens appealed the judgment.

The Ravens moved for attorney fees under Code of Civil Procedure section 1021.5 arguing that their objections to the proposed settlement resulted in important changes to the settlement that benefited the general public and the plaintiff class. They requested $76,741.26 in fees and expenses. Countrywide opposed the motion. The plaintiffs neither opposed nor supported the motion. The court concluded that it had no authority to order Countrywide to pay attorney fees that Countrywide did not agree to pay under the settlement, and that the interveners as class members were bound by the release of all claims against Countrywide. The court therefore denied the motion. The Ravens appealed the denial.

We consolidated the two appeals.

CONTENTIONS

The Ravens contend (1) the failure to provide notice in Spanish to Spanish-speaking class members violated due process, public policy, the Unruh Act (Civ. Code, § 51 et seq.), Civil Code section 1632, and the equal protection clause; (2) the notice mailed to class members

was inadequate because it did not include class counsel's telephone number; (3) notice was inadequate because there was no notice by publication or by Internet; (4) the denial of the Ravens' requests for discovery was error; (5) the plaintiffs' dismissal of two counts without court approval was improper, indicates collusion, and makes the scope of the complaint "indefinite" and the settlement invalid; (6) the minimal discovery conducted by the plaintiffs and their failure to move to compel further responses deprived the plaintiffs of information required to make an informed settlement decision and indicates collusion; (7) allowing Countrywide to serve notice to class members and to administer the settlement created a conflict of interest and was error; (8) the settlement provides no real benefit to class members other than the Brea branch customers because Countrywide has no obligation to make new loans to class members and no obligation to redeem a coupon unless its makes a new loan; (9) there is no evidence of how many class members are likely to refinance within two years after a final judgment and therefore no evidence of the value of the settlement for class members who receive coupons; (10) the interests of the Brea branch customers conflict with those of other class members because the Brea branch customers receive cash payment rather than coupons, so the Brea branch customers should have been established as a sub-class; (11) the release is overbroad as to both the entities and claims released; and (12) the Ravens as interveners defeated some of the secrecy provisions of the settlement in furtherance of the

First Amendment right of public access to court proceedings and reduced the scope of an overbroad release, and therefore are entitled to attorney fees under Code of Civil Procedure section 1021.5, and are not bound by the release in the settlement agreement.

DISCUSSION

1. *The Ravens Have No Appellate Standing to Argue that Notice Was Inadequate Because It Was Not in Spanish*

The Ravens argued for the first time in a brief filed two days before the continued hearing on final settlement approval that the failure to provide notice to Spanish-speaking class members in Spanish was improper. Their argument at that time was based on Civil Code section 1632. They augment that argument on appeal by arguing that the failure to provide notice in Spanish also violated due process, public policy, the Unruh Act, and the equal protection clause. The Ravens, however, do not claim that they speak Spanish, that they are not proficient in English, or that they were harmed in any manner by the failure to provide notice in Spanish. Moreover, their timely intervention and objection to the settlement shows that the Ravens received and understood the written notice.

Only an aggrieved party has standing to appeal. (Code Civ. Proc., § 902.) An appellant may not assert an error that affected only nonappealing parties. *(Rebney* V. *Wells Fargo*

Bank(1990) 220 Cal.App.3d 1117, 1128.) The court in *Rebney* held that objectors to a class action settlement had no standing to challenge the settlement based on its alleged unfairness to others when the alleged unfairness did not directly affect them. *(Id.* at pp. 1129-1132.) Since the Ravens have not shown that the failure to provide notice in Spanish harmed them in any manner, they have no standing on appeal to challenge the notice on that basis.

2. *Notice Was Adequate*

The purpose of notice of a class action settlement is to provide class members sufficient information to decide whether to accept the benefits of the settlement, object, or opt out. *(In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.) When due process requires notice to class members, the notice must be reasonably calculated to apprise class members of the pendency of the action and the opportunity to be heard. *(Id.* at p. 829.) Due process ordinarily does not require that each class member actually receive notice, but only that the notice "has 'a reasonable chance of reaching a substantial percentage of the class members.'" *(Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251.)

Rule 1856(e) of the California Rules of Court requires the court to consider several factors in determining the manner of notice, including the interests of the class, the type of relief requested, the stake of individual class

members, the cost of notifying class members, the parties' resources, the potential prejudice to class members who do not receive notice, and the res judicata effect on class members. Rule 1856(e) states that a court may order notice by publication in a newspaper or magazine or by the Internet in lieu of personal notice in certain circumstances. Rule 1856(d) states that if class members are given the right to opt out of the settlement, the notice must include a brief explanation of the case, including the parties' basic contentions or denials; a statement that the court will exclude a person from the class if requested by a specified date; a procedure to follow to request exclusion from the class; a statement that the judgment will bind all class members who do not request exclusion; and a statement that any class member who does not request exclusion may appear in the action through counsel.

A trial court has broad discretion to determine the appropriate form and manner of notice in compliance with these requirements. We review the ruling for abuse of discretion. *(Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 234; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164.)

Countrywide sent notice by mail to each of the 271,896 class members. The notices were addressed to the addresses shown in Countrywide's computer records as confirmed or updated with information from the change of

address database of the United States Postal Service. The postal service returned undelivered and without forwarding addresses only 3,824 notices, constituting 1.4 percent of the total number mailed. We conclude that the manner of notice complied with due process. Moreover, in light of the small percentage of class members who did not receive notice and the other factors under rule 1856(e) of the California Rules of Court, we conclude that the decision not to require notice by publication or by Internet was proper.

There is no legal requirement that notice must include the telephone number of class counsel. Whether to include that information therefore is a matter committed to the sound discretion of the trial court under the standard of review stated *ante*. The Ravens have not shown that the information in the notice was insufficient, that class counsel's telephone number was in any manner essential to ensure that the notice served its informational purpose, or for that matter that counsel's telephone number could not be obtained easily from published sources. We therefore conclude that the Ravens have not shown an abuse of discretion.

3. *The Denial of the Ravens' Requests for Discovery Was Proper*

A class member may request leave of court to conduct an oral or written deposition or a deposition for the production of business records

and things. (Cal. Rules of Court, rule 1858(a).) A court ruling on a request for discovery "must consider, among other relevant factors: [¶] (1) The timing of the request; [¶ (2) The subject matter to be covered; [¶] (3) The materiality of the information being sought; [¶ (4) The likelihood that class members have such information; [¶] (5) The possibility of reaching factual stipulations that eliminate the need for such discovery; [¶] (6) Whether class representatives are seeking discovery on the subject to be covered; and [¶] (7) Whether discovery will result in annoyance, oppression, or undue burden or expense for the members of the class." *(Id.,* rule 1858(d).) We review a trial court's ruling granting or denying discovery under the abuse of discretion standard. *(Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 241; *Lipton v. Superior Court(1996)* 48 Cal.App.4th 1599, 1612.)

The Ravens argued in their opposition to final settlement approval filed on September 4, 2002, that they were entitled "to conduct full independent discovery prior to consideration of final approval" as a matter of law, but they did not specify any particular issue on which information was lacking or propose specific discovery. At the hearing on September 11, 2002, they argued that further discovery would reveal the actual price that Countrywide paid for the credit reports.

The Ravens argued again in papers filed on October 2, 2002, that further discovery was needed and proposed a deposition of the

president of Landsafe Credit, Inc. (Landsafe), a provider of services relating to credit reports and a company related to Countrywide. The president had filed a declaration in support of final settlement approval. At the hearing on October 4, 2002, the Ravens argued that Landsafe performed services prohibited by the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.) and that the requested deposition would reveal the purported violations. The court stated, "This is the first I've heard of it since you asked for discovery initially. You did not ask for it in the papers that you filed recently." The Ravens then pointed out the request for a deposition in their recently filed papers. After hearing argument, the court granted final settlement approval and impliedly denied the request for discovery.

The Ravens argue that the court's statement at the hearing on October 4, 2002, indicates that the court did not fully consider their requests for discovery. We disagree.

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The court recalled the Ravens' initial request for discovery, and the Ravens reminded the court of their latest request and argued in support of the request at the hearing. The court need not state on the record that it has fully considered the request.

The Ravens argue that the denial of their requests for discovery "harmed the adversarial nature of the proceedings" and impaired their role as objectors, but do not discuss the specifics of their requests or the relevance of the information

sought to the good faith determination and therefore have not shown that the denial of their requests was either an abuse of discretion or prejudicial.

4. *The Final Settlement Approval Was Proper*

A class action settlement requires court approval to ensure that the settlement is fair and reasonable to the absent class members and is not a product of fraud, overreaching, or collusion by the settling parties. *(Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-180 1.) A class action settlement reached before class certification requires particularly careful scrutiny. *(Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 240; *Dunk,* at p. 1803, fn. 9.) The court should consider all of the relevant circumstances, including, without limitation, "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *(Dunk,* at p. 1801.)

A trial court has broad discretion to consider and weigh the relevant factors. *(Dunk v. Ford Motor Co., supra,* 48 Cal.App.4th at p. 1801.) Our task on appeal is not to reweigh those factors

or substitute .our own notions of fairness for those of the trial court. *(Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 245; *Dunk,* at p. 1801.) Rather, we determine only whether the record shows a clear abuse of discretion. *(Wershba,* at p. 235; *Dunk,* at p. 1802.) To the extent the court's ruling is based on improper criteria or incorrect legal assumptions, we review those questions of law de novo *(Wershba,* at p. 235; cf. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 436.)

The value of coupons to a settlement class as a whole generally is substantially less than the coupons' aggregate face value because class members for many reasons may choose not to redeem them. *(Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 247; *Dunk v. Ford Motor Co., supra,* 48 Cal.App.4th at p. 1805, fn. 13.) This is a factor to consider in evaluating the fairness of a settlement, but it is not necessarily a determinative factor. *(Wershba,* at p. 247; *Dunk,* at p. 1805, fn. 13.) Moreover, the settling parties need not present evidence of how many class members are likely to redeem the coupons. *(Wershba,* at p. 247; *Dunk,* at p. 1804.) Unless the record clearly shows that the settlement is of no value to the class, we must defer to the trial court's finding that the total consideration provided under the settlement is of some value. *(Wershba,* at p. 247.)

The fact that Countrywide has no obligation to make new loans to class members does not render the coupons valueless or illusory,

as the Ravens argue. There is no compelling reason to believe that Countrywide will apply its lending criteria unfairly or arbitrarily for the purpose of denying a $35 credit.

Moreover, the settlement provides additional relief in favor of the plaintiff class, including Countrywide's agreement to eliminate markups and provisions to monitor Countrywide's compliance with the settlement. These provisions constitute additional consideration for the settlement. The Ravens have not shown an abuse of discretion in the trial court's determination that the total consideration provided is fair and adequate.

The Ravens' contention that the failure to establish a sub-class of Brea borrowers was error is based on the argument that the other class members receive nothing of value under the settlement and were treated unfairly because they were not separately represented. "There is . . . no legal requirement that all members of the class must participate equally in any settlement. While intraclass disparities may be a signal of unfairness, the inference is rebuttable by a showing that differences in treatment 'arerationally based on legitimate considerations.' [Citations.]" *(7-Eleven Owners for Fair Franchising v. Southland Corp., supra,* 85 Cal.App.4th at p. 1162.) The plaintiffs submitted evidence that the incidence of markups was higher for Brea branch borrowers than for other borrowers. The Ravens do not challenge that evidence, have not shown that non-Brea class members receive nothing of

value under the settlement, and have not shown an abuse of discretion.

The Ravens also challenge the settlement based on the extent of discovery completed. The plaintiffs propounded written discovery, including form and special interrogatories and document demands. Countrywide responded to the discovery and provided informal discovery concerning Countrywide's policies and practices and the results of an internal investigation revealing that some markups did occur. Although the plaintiffs took no depositions, the trial court reasonably could conclude that the information gleaned through formal and informal discovery was sufficient for the plaintiffs to make an informed settlement decision.

Contrary to the Ravens' argument, the plaintiffs' failure to obtain court approval before dismissing two counts two months after filing the complaint does not compel the conclusion that the settlement is collusive or unfair or that the scope of the complaint is "indefinite." The plaintiffs disclosed the dismissal in their motion for preliminary approval of the settlement, so we presume that the court took it into consideration together with the other relevant circumstances. The Ravens have not shown an abuse of discretion.

With respect to the release, the Ravens exaggerate its scope. The release pertains only to "Settled Claims," defined in relevant part as claims arising from or relating to Countrywide's

"past charges for credit reports and disclosures or non-disclosures or omissions related to credit reports or fees for credit reports." The release does not extend to "just about every possible credit claim on Earth" against Countrywide or its affiliates, as the Ravens contend. The Ravens have not shown that the release necessarily renders the settlement unfair and therefore have not shown an abuse of discretion with respect to the release.

Finally, there is no law or public policy prohibiting a class action defendant from serving notice to the plaintiff class members or from administering a settlement. Whether to approve a settlement with those terms therefore is a matter committed to the sound discretion of the court evaluating the fairness and reasonableness of the settlement. The record discloses no circumstances that compel the conclusion that Countrywide could not be trusted to faithfully perform those tasks.

We conclude that the trial court acted within its discretion in finding the settlement fair, adequate, and reasonable.

5. *The Ravens Have Not Shown that They Are Entitled to Attorney Fees*

Code of Civil Procedure section 1021.5 provides for an award of attorney fees to a "successful party" against an opposing party in an action that "has resulted in the enforcement of an important right affecting the public interest" if

the action conferred a significant benefit to the general public or a large class of persons and the necessity and benefit of private enforcement make the award appropriate. *(Ibid.; Schmier v. Supreme Court* (2002) 96 Cal.App.4th 873, 877.) A party need not obtain a favorable judgment to be considered successful under the statute. *(Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291.) Rather, a party is considered successful if, due to the party's efforts, the litigation vindicated an important right. *(Id.* at pp. 129 1-1292.)

"As our Supreme Court has repeatedly observed, the Legislature did not intend section 1021.5 to authorize an attorney fees award in every case involving a violation of an important statutory or constitutional right. *(Press v. Lucky Stores, Inc.* [(1983)] 34 Cal.3d [311,] 319, fn. 7 ['Of course, not all lawsuits enforcing constitutional guarantees will warrant an award of fees.']; *Woodland Hills Residents Assn., Inc. v. City Council,* [(1979)] 23 Cal.3d [917,] 939 ['[T]he Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation.'].) A fortiori, the Legislature did not intend to authorize an award of attorney fees in every case in which first amendment issues are only marginally involved.. . ." *(Family Planning Specialists Medical Group, Inc. v. Powers* (1995) 39 Cal.App.4th *1561, 1570.)*

A court approving a class action settlement may award attorney fees under Code of Civil Procedure section 1021.5 to a successful party if the statutory requirements are satisfied. (See

Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, *52; Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at pp. *254-255.)* The court must independently determine whether a party is entitled to fees, and the settling parties' agreement providing for fees is not binding on the court. (See *Anthony v. Superior Court* (1976) *59* Cal.App.3d 760, 771.) The court also must independently determine a reasonable amount of fees, and the settling parties' agreement concerning the amount of fees is not binding on the court. *(Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128; *Dunkv. Ford Motor Co., supra,* 48 Cal.App.4th at p. 1808.) A court also may award attorney fees under Code of Civil Procedure section 1021.5 to an intervener in a class action if the statutory requirements are satisfied. *(Crawfordv. Board of Education* (1988) 200 Cal.App.3d 1397, 1407.)

Even if a court approving a class action settlement may award fees under the statute to an intervener and that the trial court's conclusion to the contrary was error, we conclude that the Ravens have not shown that they satisfied the statutory requirements and therefore have not shown that the error was prejudicial.

The Ravens did not succeed in their primary litigation objective of preventing court approval of what they still maintain is an unfair settlement, or in increasing or modifying the monetary consideration received by the class. The only changes to the settlement that may have

resulted from their efforts were the requirements that the compliance reports be verified and disclosed. The Ravens do not explain why those marginal changes to the settlement resulted in a significant benefit to the general public or the plaintiff class. The only apparent benefit as a practical matter was to provide greater assurance of accuracy of the reports concerning Countrywide's practices after entry ofjudgment and perhaps to provide greater incentive for Countrywide to comply with the disclosure and no-markup settlement provisions. Particularly in light of the trial court's conclusion that the incidence of markups was infrequent, we conclude that the Ravens have not shown that the apparent benefits of these changes were significant.

The Ravens contend they "also succeeded in reducing the vast overbreadth" of the release, despite the fact that the court approved the language of the release without change. This apparently refers to what the Ravens characterized in their motion for fees as "significant concessions on the record, limiting what Intervenors argued was a vastly overbroad release." The Ravens have not shown that their efforts resulted in a significant benefit with respect to the release. The release was not vastly overbroad, as we have stated, and the purported "concessions on the redord" were merely Countrywide's legal arguments at the hearing on final settlement approval rejecting the Ravens' misconstruction of the release.

DISPOSITION

The judgment and order are affirmed. The plaintiffs and Countrywide are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P.J.

ALDRICH, J.

APPENDIX B — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING REVIEW OF THE OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE OF AUGUST 26, 2004
DATED AND DECIDED NOVEMBER 10, 2004

Court of Appeal, Second Appellate District,
Division Three No. B 163706
S128288

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ANNIE Y. GONZALES et al., Plaintiffs and Respondents,
v.
COUNTRYWIDE HOME LOANS INC., Defendant and Respondent;
KATHLEEN RAVEN et al., Interveners and Appellants.

Petition for review DENIED.

SUPREME COURT
FILED
NOV 10 2004
Frederick K Ohlrich
Clerk

_____
DEPUTY

George, J.
Chief Justice

(2)

Supreme Court, U.S.
FILED
MAR 7 - 2005
OFFICE OF THE CLERK

No. 04-1077

In The Supreme Court of the United States

KATHLEEN RAVEN and TONEY RAVEN,

Petitioners,

v.

COUNTRYWIDE HOME LOANS, INC., ANNE Y. GONZALES and JULIE TOWER,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal Second Appellate District, Division Three

BRIEF IN OPPOSITION

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QUESTIONS FOR REVIEW

1. Did the California Court of Appeal determine, on an independent and adequate state law ground, that the Ravens, who read and speak English, had no standing under California law to raise, on appeal from a class action settlement, the issue of whether class notice should have been sent to other class members in Spanish rather than English?

2. Do the Ravens have standing in this Court to vindicate other class members' rights, if any, to Spanish-language class notice?

3. Does the federal constitution require state courts to send class notice in languages other than English to class members known to read or speak those languages even when there is no evidence that class members could not understand English-language class notice?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all the parties to this case.

CORPORATE DISCLOSURE STATEMENT

Countrywide Home Loans, Inc., is a corporation engaged in residential mortgage lending and servicing in its own name and under the fictitious business name America's Wholesale Lender. It is a wholly owned subsidiary of Countrywide Financial Corporation, a publicly held corporation whose shares trade on the New York Stock Exchange.

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BRIEF IN OPPOSITION

Respondent Countrywide Home Loans, Inc. ("Countrywide") respectfully submits that the Ravens' petition for a writ of certiorari should be denied for the reasons stated below.

JURISDICTION

This case was litigated in the California state courts. The Ravens claim to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a). Countrywide submits that the Court has no jurisdiction as the case was decided below on independent and adequate state law grounds and did not draw into question the validity of any treaty or statute of the United States or of any state or adjudicate any claim of a title, right, privilege or immunity claimed under the Constitution, treaties or laws of the United States.

STATEMENT OF THE CASE

Purportedly acting on behalf of a class, plaintiffs Anne Gonzales and Julie Tower sued Countrywide in the Superior Court of the State of California for Los Angeles County, alleging that Countrywide overcharged its loan customers by marking up fees for certain third-party services such as credit reports.

After an initial round of discovery, plaintiffs and Countrywide engaged in lengthy settlement discussions and eventually entered into a proposed tentative settlement following a settlement conference mediated by a Los Angeles Superior Court judge.

The trial judge hearing the case, the Honorable Carolyn B. Kuhl, did *not* approve the initial tentative settlement. At a later court-mediated settlement conference, the parties hammered out terms more favorable to the alleged class. The revised settlement was again presented to Judge Kuhl. She tentatively approved the settlement and a form of class notice which she directed Countrywide to mail to class members.

Notice was mailed to class members as ordered. It was sent in English only. It explained the nature of the action, the principal terms of the proposed settlement, and class members' rights with respect to the action and settlement.

In response to the notice, Howard Strong originally appeared on his own behalf as an objecting class member, but later withdrew as an objector himself, choosing instead to present objections on behalf of petitioners, Kathleen and Toney Raven, who also claimed to be members of the class. Strong was granted access to the discovery materials in the case. He filed a lengthy brief in support of the Ravens' numerous objections to the settlement. Neither the Ravens nor anyone else then objected to the fact that class notice had been sent in English only.

At the settlement approval hearing on September 11, 2002, Strong presented oral argument in support of the Ravens' objections. Judge Kuhl stated she found no merit to most of the Ravens' objections but asked for supplemental submissions regarding two issues not involving class notice. Judge Kuhl scheduled a further settlement approval hearing on October 4, 2002.

In leaving the courtroom after the September 11 hearing, Strong stopped to talk with persons seated in the audience section of the courtroom. He learned they were Spanish-speaking class members who had appeared at the hearing in response to the class notice.

On October 2, 2002, Strong filed an additional brief on the Ravens' behalf, discussing the two issues on which Judge Kuhl had requested additional submissions and also raising, for the first time, an objection on the ground that class notice had not been sent in Spanish. No evidence was submitted regarding the number of class members who read or spoke Spanish only or whether any Spanish-speaking class members were unable to read the class notice or find someone to read and translate it for them.

At the second settlement approval hearing on October 4, 2002, Judge Kuhl rejected the Ravens' remaining objections, approved the settlement, and entered judgment dismissing the action. Regarding Spanish-language notice, Judge Kuhl observed:

> We now have this new issue with respect to whether the notice should have been sent in Spanish. While it may have been desirable in retrospect to send a Spanish-language version, it does appear that persons were able to get their questions resolved. We did not have any particular individual filing an objection on the basis of that individual not having been able to understand the notice without, for example, having to hire somebody.

The Ravens appealed, again raising a welter of objections, including their belatedly raised objection to English-only class notice. The Court of Appeal rejected all of the

Ravens' arguments and affirmed the judgment below. Pet. App., 23a.

As to Spanish-language class notice, the Court of Appeal noted:

> The Ravens . . . do not claim that they speak Spanish, that they are not proficient in English, or that they were harmed in any manner by the failure to provide notice in Spanish. Moreover, their timely intervention and objection to the settlement shows that the Ravens received and understood the written notice.

Pet. App., 9a.

Following *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 269 Cal. Rptr. 844, 852-53 (1990), the Court of Appeal held that since the Ravens had not shown they were harmed by English-only class notice, they had no standing to challenge the notice on that basis. Pet. App., 10a.

The Ravens' petition for review by the California Supreme Court was summarily denied on November 10, 2004. Pet. App., 24a.

REASONS FOR DENYING THE WRIT

I. No Issue Regarding *Devlin v. Scardelletti* Is Presented; The Case Was Decided On Independent State Law Grounds

The Ravens do not properly raise any issue regarding the scope of this Court's decision in *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

This case arose and was litigated in California state court. State law governs procedure in state court. Applying California state law, the California Court of Appeal held that the Ravens had no standing, on appeal, to challenge aspects of a class action settlement that did not affect them individually. Pet. App., 9a-10a. That holding raises no federal question. 28 U.S.C. § 1257(a); Sup. Ct. Rule 10(b), (c).

Devlin involved a question of federal appellate procedure. The Court's resolution of that question was not based on constitutional principles or on statutes binding on the states. *Devlin* is not binding on state courts, which are free to adopt their own rules of appellate procedure. *See ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989).

The Texas and Arkansas supreme court decisions, which the Ravens cite, do not hold otherwise, but instead cite *Devlin* as persuasive, not binding, authority on the state law issue of standing to appeal in state court. Persuaded by this Court's reasoning, the Texas Supreme Court adopted *Devlin*'s rule as a principle of Texas law. *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 754-55 (Tex. 2003). While acknowledging that *Devlin* undermined "one of the common-law foundations" of Arkansas' state law procedural requirement that class members must move to intervene if they wish to appeal, the Arkansas Supreme Court nevertheless applied that requirement and dismissed appeals by non-intervening class members. *Butt v. Evans Law Firm*, 351 Ark. 566, 98 S.W.3d 1, 7 (2003).

Moreover, the California Court of Appeal did not depart from *Devlin's* teaching in this case. The only issue in *Devlin* was "whether nonnamed class members who fail

to properly intervene may bring an appeal of the approval of a settlement." *Devlin*, 536 U.S. at 6; *see also id.*, at 14.

Devlin did not hold that a class member may challenge, on appeal, features of a class settlement or class action procedure which do not adversely affect him or her. Instead, this Court stated that prudential standing requirements, such as "the general prohibition on a litigant's raising another person's legal rights," were not at issue in *Devlin* because "[t]he legal rights he [the appealing class member] seeks to raise are his own. . . ." *Devlin*, 536 U.S. at 7.

Here, the Ravens *did* intervene and *were* allowed to appeal approval of the class settlement. Their appeal was not dismissed. It was decided on the merits, with a single exception. Pet. App., 23a.

The exception was the Ravens' contention that it was improper to give class notice in English only, not Spanish. The California Court of Appeal held that the Ravens lacked standing to raise that one issue because they were not adversely affected by English-only notice. Pet. App., 9a-10a. They did not claim they were not proficient in English. Their timely objections showed they understood the class notice though it was given in English only. They did not say they suffered any other harm from lack of Spanish-language notice. *Id.*, 9a.

As to Spanish-language notice, the Ravens sought to vindicate others' legal rights, not their own. *Devlin* did not abrogate the prudential standing requirement which generally bars litigation of others' rights. The California Court of Appeal correctly applied that rule, as a matter of state law, to prevent the Ravens from challenging the class notice which they could and did read.

There is no reason to grant certiorari in this case to confirm that the California Court of Appeal's unpublished decision correctly resolves this issue. Indeed, the Court lacks jurisdiction to do so, as the issue involves only an issue of state law governing state court appellate procedure, not any federal question.

II. There Is No Constitutional Right To Foreign Language Class Notice And The Ravens Have No Standing To Raise The Issue

The Ravens' petition also presents no issue appropriate for this Court's review as to whether a class member has a federal constitutional right to class notice in a language other than English.

California's courts never decided the Ravens' due process and equal protection claims regarding English-only class notice on the merits, having found that the Ravens lacked standing to raise them. Lack of standing is an independent and adequate state law ground for the California Court of Appeal's decision,[1] barring this Court's review of the constitutional issues which that court did not reach for procedural reasons. *Lee v. Kemna*, 534 U.S. 362, 375 (2002); *Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991).

Review of the Ravens' due process and equal protection claims is also barred because the Ravens lack constitutional and prudential standing to raise those claims. The

[1] The case cited in the California Court of Appeal opinion shows that California applies this standing rule evenhandedly and consistently, not discriminating against or stifling federal claims preferentially. *See Rebney*, 269 Cal. Rptr. at 850-53 (1990).

Ravens cannot show injury in fact, the first of Article III's three irreducible minimum requirements of standing. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04 (1998). The Ravens do not claim they cannot read English. They timely objected and intervened, showing they understood the English-only notice. They do not say they have suffered any other injury by receiving class notice in English. Pet. App., 9a.

The Ravens also do not seek to vindicate their own rights, but the rights of other class members who, unlike the Ravens, read only Spanish, not English. The Ravens do not fall within any recognized exception to the prudential standing requirement that a plaintiff must normally assert his or her own legal rights, not those of third parties. *See Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 775 (1994); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 80 (1978); *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

The Ravens have also failed to show that there is any conflict among lower court decisions on their second question presented. In fact, there is none. For decades, state and lower federal courts have agreed that there is no due process or equal protection right to notice in a language other than English.[2]

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[2] *Nazarova v. INS*, 171 F.3d 478, 483 (7th Cir. 1999); *Alonso v. Arabel, Inc.*, 622 So.2d 187, 188 (Fla. App. 1993); *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983), *cert. den.*, 466 U.S. 929 (1984); *Vialez v. New York City Housing Auth.*, 783 F. Supp. 109, 120 (S.D.N.Y. 1991); *Alfonso v. Board of Review*, 89 N.J. 41, 444 A.2d 1075, 1077, *cert. den.*, 459 U.S. 806 (1982); *Hernandez v. Department of Labor*, 83 Ill.2d 512, 416 N.E.2d 263, 267 (1981); *DaLomba v. Director of Div. of Employment Security*, 369 Mass. 92, 337 N.E.2d 687, 689-690 (1975);

(Continued on following page)

Nor have the Ravens established that their due process or equal protection issue is of sufficient importance to warrant this Court's review, particularly in a case, such as this one, where the trial court found there was no evidence that any class member had actually been prejudiced by English-only class notice.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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